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The Prudential Insurance Company of America  
12

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 Roberto Sattin and Lesley Sattin,  
17 Plaintiffs,

18 v.

19 The Prudential Insurance Company of  
America; and Does 1 to 10, inclusive,  
20 Defendants.

Case No. 8:18-cv-1288 AG (ADSx)

Hon. Andrew J. Guilford

**PROTECTIVE ORDER**

21 AND RELATED COUNTERCLAIM  
22  
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1 Plaintiffs Roberto Sattin and Lesley Sattin (“Plaintiffs”) and Defendant The  
2 Prudential Insurance Company of America (“Defendant”), by their undersigned  
3 counsel, hereby stipulate to the entry of the following protective order (“Order”)  
4 pursuant to Fed. R. Civ. P.26(c). This Order was drafted using United States  
5 District Court Judge, Honorable Andrew J. Guilford’s model protective order.

6 **1. PURPOSE AND LIMITS OF THIS ORDER**

7 Discovery in this action is likely to involve confidential, proprietary, or  
8 private information requiring special protection from public disclosure and from  
9 use for any purpose other than this litigation. Thus, the Court enters this Protective  
10 Order. This Order does not confer blanket protections on all disclosures or  
11 responses to discovery, and the protection it gives from public disclosure and use  
12 extends only to the specific material entitled to confidential treatment under the  
13 applicable legal principles. This Order does not automatically authorize the filing  
14 under seal of material designated under this Order. Instead, the parties must comply  
15 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not  
16 govern the use at trial of material designated under this Order.

17 **2. DESIGNATING PROTECTED MATERIAL**

18 **2.1 Over-Designation Prohibited.** Any party or non-party who  
19 designates information or items for protection under this Order as  
20 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL — ATTORNEY EYES  
21 ONLY," or "HIGHLY CONFIDENTIAL —SOURCE CODE" (a "designator")  
22 must only designate specific material that qualifies under the appropriate standards.  
23 To the extent practicable, only those parts of documents, items, or oral or written  
24 communications that require protection shall be designated. Designations with a  
25 higher confidentiality level when a lower level would suffice are prohibited. Mass,  
26 indiscriminate, or routinized designations are prohibited. Unjustified designations  
27 expose the designator to sanctions, including the Court's striking all confidentiality  
28 designations made by that designator. Designation under this Order is allowed only

1 if the designation is necessary to protect material that, if disclosed to persons not  
2 authorized to view it, would cause competitive or other recognized harm. Material  
3 may not be designated if it has been made public, or if designation is otherwise  
4 unnecessary to protect a secrecy interest. If a designator learns that information or  
5 items that it designated for protection do not qualify for protection at all or do not  
6 qualify for the level of protection initially asserted, that designator must promptly  
7 notify all parties that it is withdrawing the mistaken designation.

8 **2.2 Manner and Timing of Designations.**¶ Designation under this Order  
9 requires the designator to affix the applicable legend ("CONFIDENTIAL,"  
10 "HIGHLY CONFIDENTIAL — ATTORNEY EYES ONLY," or "HIGHLY  
11 CONFIDENTIAL —SOURCE CODE") to each page that contains protected  
12 material. For testimony given in deposition or other proceeding, the designator shall  
13 specify all protected testimony and the level of protection being asserted. It may  
14 make that designation during the deposition or proceeding, or may invoke, on the  
15 record or by written notice to all parties on or before the next business day, a right  
16 to have up to 21 days from the deposition or proceeding to make its designation.

17 **2.2.1** A party or non-party that makes original documents or materials  
18 available for inspection need not designate them for protection until after the  
19 inspecting party has identified which material it would like copied and produced.  
20 During the inspection and before the designation, all material shall be treated as  
21 HIGHLY CONFIDENTIAL — ATTORNEY EYES ONLY. After the inspecting  
22 party has identified the documents it wants copied and produced, the producing  
23 party must designate the documents, or portions thereof, that qualify for protection  
24 under this Order.

25 **2.2.2** Parties shall give advance notice if they expect a deposition or  
26 other proceeding to include designated material so that the other parties can ensure  
27 that only authorized individuals are present at those proceedings when such  
28 material is disclosed or used. The use of a document as an exhibit at a deposition

shall not in any way affect its designation. Transcripts containing designated material shall have a legend on the title page noting the presence of designated material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated, and the level of protection being asserted. The designator shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of the 21-day period for designation shall be treated during that period as if it had been designated HIGHLY CONFIDENTIAL — ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of the 21-day period, the transcript shall be treated only as actually designated.

**2.3 Inadvertent Failures to Designate.**¶ An inadvertent failure to designate does not, standing alone, waive protection under this Order. Upon timely assertion or correction of a designation, all recipients must make reasonable efforts to ensure that the material is treated according to this Order.

### **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

All challenges to confidentiality designations shall proceed under L.R. 37-1 through L.R. 37-4.

### **4. ACCESS TO DESIGNATED MATERIAL**

**4.1 Basic Principles.**¶ A receiving party may use designated material only for this litigation. Designated material may be disclosed only to the categories of persons and under the conditions described in this Order.

**4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**¶ Unless otherwise ordered by the Court or permitted in writing by the designator, a receiving party may disclose any material designated CONFIDENTIAL only to:

**4.2.1** The receiving party's outside counsel of record in this action and employees of outside counsel of record to whom disclosure is reasonably necessary;

1                   **4.2.2** The officers, directors, and employees of the receiving party to  
2 whom disclosure is reasonably necessary;

3                   **4.2.3** Experts retained by the receiving party's outside counsel of  
4 record to whom disclosure is reasonably necessary, and who have signed the  
5 Agreement to Be Bound (Exhibit A);

6                   **4.2.4** The Court and its personnel;

7                   **4.2.5** Outside court reporters and their staff, professional jury or trial  
8 consultants, and professional vendors to whom disclosure is reasonably necessary,  
9 and who have signed the Agreement to Be Bound (Exhibit A);

10                  **4.2.6** During their depositions, witnesses in the action to whom  
11 disclosure is reasonably necessary and who have signed the Agreement to Be  
12 Bound (Exhibit A); and

13                  **4.2.7** The author or recipient of a document containing the material, or  
14 a custodian or other person who otherwise possessed or knew the information.

15                  **4.3 Disclosure of HIGHLY CONFIDENTIAL — ATTORNEY EYES**  
16 **ONLY and HIGHLY CONFIDENTIAL — SOURCE CODE Material**  
17 **Without Further Approval.** Unless permitted in writing by the designator, a  
18 receiving party may disclose material designated HIGHLY CONFIDENTIAL —  
19 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL — SOURCE CODE  
20 without further approval only to:

21                  **4.3.1** The receiving party's outside counsel of record in this action and  
22 employees of outside counsel of record to whom it is reasonably necessary to  
23 disclose the information;

24                  **4.3.2** The Court and its personnel;

25                  **4.3.3** Outside court reporters and their staff, professional jury or trial  
26 consultants, and professional vendors to whom disclosure is reasonably necessary,  
27 and who have signed the Agreement to Be Bound (Exhibit A); and  
28

1                   **4.3.4** The author or recipient of a document containing the material, or  
2 a custodian or other person who otherwise possessed or knew the information.

3                   **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
4 **CONFIDENTIAL — ATTORNEY EYES ONLY or HIGHLY**  
5 **CONFIDENTIAL —SOURCE CODE Material to In-House Counsel or**  
6 **Experts.**¶ Unless agreed to in writing by the designator:

7                   **4.4.1** A party seeking to disclose to in-house counsel any material  
8 designated HIGHLY CONFIDENTIAL — ATTORNEY EYES ONLY must first  
9 make a written request to the designator providing the full name of the in-house  
10 counsel, the city and state of such counsel's residence, and such counsel's current  
11 and reasonably foreseeable future primary job duties and responsibilities in  
12 sufficient detail to determine present or potential involvement in any competitive  
13 decision-making. In-house counsel are not authorized to receive material designated  
14 HIGHLY CONFIDENTIAL — SOURCE CODE.

15                   **4.4.2** A party seeking to disclose to an expert retained by outside  
16 counsel of record any information or item that has been designated HIGHLY  
17 CONFIDENTIAL — ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL  
18 —SOURCE CODE must first make a written request to the designator that (1)  
19 identifies the general categories of HIGHLY CONFIDENTIAL — ATTORNEY  
20 EYES ONLY or HIGHLY CONFIDENTIAL — SOURCE CODE information that  
21 the receiving party seeks permission to disclose to the expert, (2) sets forth the full  
22 name of the expert and the city and state of his or her primary residence, (3)  
23 attaches a copy of the expert's current resume, (4) identifies the expert's current  
24 employer(s), (5) identifies each person or entity from whom the expert has received  
25 compensation or funding for work in his or her areas of expertise (including in  
26 connection with litigation) in the past five years, and (6) identifies (by name and  
27 number of the case, filing date, and location of court) any litigation where the  
28 expert has offered expert testimony, including by declaration, report, or testimony

1 at deposition or trial, in the past five years. If the expert believes any of this  
2 information at (4) - (6) is subject to a confidentiality obligation to a third party, then  
3 the expert should provide whatever information the expert believes can be disclosed  
4 without violating any confidentiality agreements, and the party seeking to disclose  
5 the information to the expert shall be available to meet and confer with the  
6 designator regarding any such confidentiality obligations.

7 **4.4.3** A party that makes a request and provides the information  
8 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the  
9 identified in-house counsel or expert unless, within seven days of delivering the  
10 request, the party receives a written objection from the designator providing  
11 detailed grounds for the objection.

12 **4.4.4** All challenges to objections from the designator shall proceed  
13 under L.R. 37-1 through L.R. 37-4.

14 **5. SOURCE CODE**

15 **5.1 Designation of Source Code.**¶ If production of source code is  
16 necessary, a party may designate it as HIGHLY CONFIDENTIAL — SOURCE  
17 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

18 **5.2 Location and Supervision of Inspection.**¶ Any HIGHLY  
19 CONFIDENTIAL — SOURCE CODE produced in discovery shall be made  
20 available for inspection, in a format allowing it to be reasonably reviewed and  
21 searched, during normal business hours or at other mutually agreeable times, at an  
22 office of the designating party's counsel or another mutually agreeable location. The  
23 source code shall be made available for inspection on a secured computer in a  
24 secured room, and the inspecting party shall not copy, remove, or otherwise transfer  
25 any portion of the source code onto any recordable media or recordable device. The  
26 designator may visually monitor the activities of the inspecting party's  
27 representatives during any source code review, but only to ensure that there is no  
28 unauthorized recording, copying, or transmission of the source code.



1           **5.3 Paper Copies of Source Code Excerpts.**¶ The inspecting party may  
2 request paper copies of limited portions of source code that are reasonably  
3 necessary for the preparation of court filings, pleadings, expert reports, other  
4 papers, or for deposition or trial. The designator shall provide all such source code  
5 in paper form, including Bates numbers and the label "HIGHLY CONFIDENTIAL  
6 — SOURCE CODE."

7           **5.4 Access Record.**¶ The inspecting party shall maintain a record of any  
8 individual who has inspected any portion of the source code in electronic or paper  
9 form, and shall maintain all paper copies of any printed portions of the source code  
10 in a secured, locked area. The inspecting party shall not convert any of the  
11 information contained in the paper copies into any electronic format other than for  
12 the preparation of a pleading, exhibit, expert report, discovery document, deposition  
13 transcript, or other Court document. Any paper copies used during a deposition  
14 shall be retrieved at the end of each day and must not be left with a court reporter or  
15 any other unauthorized individual.

16       **6. PROSECUTION BAR**

17           Absent written consent from the designator, any individual who receives  
18 access to HIGHLY CONFIDENTIAL — ATTORNEY EYES ONLY or HIGHLY  
19 CONFIDENTIAL — SOURCE CODE information shall not be involved in the  
20 prosecution of patents or patent applications concerning the field of the invention of  
21 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or  
22 other affiliate during the pendency of this action and for one year after its  
23 conclusion, including any appeals. "Prosecution" means drafting, amending,  
24 advising on the content of, or otherwise affecting the scope or content of patent  
25 claims or specifications. These prohibitions shall not preclude counsel from  
26 participating in reexamination or *inter partes* review proceedings to challenge or  
27 defend the validity of any patent, but counsel may not participate in the drafting of  
28 amended claims in any such proceedings.



1     **7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2     **PRODUCED IN OTHER LITIGATION**

3         **7.1     Subpoenas and Court Orders.**¶ This Order in no way excuses non-  
4 compliance with a lawful subpoena or court order. The purpose of the duties  
5 described in this section is to alert the interested parties to the existence of this  
6 Order and to give the designator an opportunity to protect its confidentiality  
7 interests in the court where the subpoena or order issued.

8         **7.2     Notification Requirement.**¶ If a party is served with a subpoena or a  
9 court order issued in other litigation that compels disclosure of any information or  
10 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL  
11 — ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL — SOURCE  
12 CODE, that party must:

13                 **7.2.1** Promptly notify the designator in writing. Such notification shall  
14 include a copy of the subpoena or court order;

15                 **7.2.2** Promptly notify in writing the party who caused the subpoena or  
16 order to issue in the other litigation that some or all of the material covered by the  
17 subpoena or order is subject to this Order. Such notification shall include a copy of  
18 this Order; and

19                 **7.2.3** Cooperate with all reasonable procedures sought by the  
20 designator whose material may be affected.

21         **7.3     Wait For Resolution of Protective Order.**¶ If the designator timely  
22 seeks a protective order, the party served with the subpoena or court order shall not  
23 produce any information designated in this action as CONFIDENTIAL, HIGHLY  
24 CONFIDENTIAL —ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL  
25 — SOURCE CODE before a determination by the court where the subpoena or  
26 order issued, unless the party has obtained the designator's permission. The  
27 designator shall bear the burden and expense of seeking protection of its  
28 confidential material in that court.

1     **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

2             If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
3 designated material to any person or in any circumstance not authorized under this  
4 Order, it must immediately (1) notify in writing the designator of the unauthorized  
5 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
6 designated material, (3) inform the person or persons to whom unauthorized  
7 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
8 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

9     **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
10    **PROTECTED MATERIAL**

11            When a producing party gives notice that certain inadvertently produced  
12 material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5) (B).  
14 This provision is not intended to modify whatever procedure may be established in  
15 an e-discovery order that provides for production without prior privilege review  
16 pursuant to Federal Rule of Evidence 502(d) and (e).

17    **10. FILING UNDER SEAL**

18            Without written permission from the designator or a Court order, a party may  
19 not file in the public record in this action any designated material. A party seeking  
20 to file under seal any designated material must comply with L.R. 79-5.1. Filings  
21 may be made under seal only pursuant to a court order authorizing the sealing of the  
22 specific material at issue. The fact that a document has been designated under this  
23 Order is insufficient to justify filing under seal. Instead, parties must explain the  
24 basis for confidentiality of each document sought to be filed under seal. Because a  
25 party other than the designator will often be seeking to file designated material,  
26 cooperation between the parties in preparing, and in reducing the number and extent  
27 of, requests for under seal filing is essential. If a receiving party's request to file  
28 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then

the receiving party may file the material in the public record unless (1) the designator seeks reconsideration within four days of the denial, or (2) as otherwise instructed by the Court.

**11. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, each party shall return all designated material to the designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the designator by the 60-day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain subject to this Order.

**[SIGNATURES BELOW]**

1                   **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2  
3       Dated:   October 29, 2018

LAURA LEIGH GEIST  
ANDREW S. AZARMI  
KELLY R. GRAF  
DENTONS US LLP

5  
6                   By: /s/Andrew S. Azarmi  
                      Andrew S. Azarmi

7                   Attorneys for Defendant The Prudential  
8                   Insurance Company of America

9       Dated:   October 29, 2018

ROBERT J. MCKENNON  
RYAN R. TIKKER  
MCKENNON LAW GROUP PC

11                  By: /s/Robert J. McKennon  
12                  Robert J. McKennon

13                  Attorneys for Plaintiffs  
14                  Roberto Sattin and Lesley Sattin

15                  I hereby attest that all other signatories listed, and on whose behalf this filing  
16                  is submitted, concur in the filing's content and have authorized the filing.

17       Dated:   October 29, 2018

DENTONS US LLP

18                  By: /s/Andrew S. Azarmi  
19                  Andrew S. Azarmi

20                  Attorneys for Defendant  
21                  The Prudential Insurance Company of  
22                  America

23                  **IT IS SO ORDERED.**

24       DATED:   October 30, 2018

/s/ Autumn D. Spaeth

25                  Autumn D. Spaeth  
26                  United States Magistrate Judge

EXHIBIT A  
AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment for contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]

**CERTIFICATE OF SERVICE (L.R. 5-3.2 & 5-4.1.3)**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017; my e-mail notification address is linda.ainsworth@dentons.com.


On October 1, 2018, the foregoing document, entitled **PROTECTIVE ORDER**, is being electronically filed with the Clerk of the Court using the CM/ECF System, which automatically generates a "Notice of Electronic Filing" ("NEF") that is sent by e-mail to all interested parties/counsel of record in this action who are registered CM/ECF Users and have consented to receive service electronically. The NEF includes a hyperlink to the filed document which allows recipients to retrieve said document directly from the Court's CM/ECF Website. The following parties/counsel for parties are being served in such manner:

*Counsel for Plaintiffs Roberto Sattin and Lesley J. Sattin*

Robert J. McKennon	E-mail: rm@mckennonlawgroup.com
Ryan R. Tikker	t@mckennonlawgroup.com
Scott E. Calvert	sc@mckennonlawgroup.com
McKennon Law Group PC	
20321 SW Birch St., Suite 200	Telephone: 949-387-9595
Newport Beach, CA 92660	Facsimile: 949-385-5165

I declare that I am employed in the office of a member of the bar of this Court at whose direction said filing and service was made.

Executed on October 29, 2018, at Los Angeles, California.

  
Linda Ainsworth